No doubt some will be disappointed because a permanent court is not set up by the treaty.

The constitution of such a court must be a development. Careful study is needed to outline its make-up, its methods of procedure, its jurisdiction and the law by which it is to be governed. Courts are the administrators of law, not of their own wills. Arbitrators, to some extent, make their own law and, so long as they act fairly, their judgments stand. An international court, therefore, presupposes an international law. Although many principles of international law are received by common consent, there are many others in regard to which there is no such consent. Upon these last points questions would most naturally arise. By what law, then, should they be judged? Shall it be the law as claimed by one country or the other? It may be said: "Let the court settle the law, and that will end the matter." Simple as such a short cut method may seem, it involves serious consequences, which need to be weighed before committing either country to a system of law which may be contrary to all its traditions and practice. We do not trust our own courts to make law in this way. They are supposed to administer the common law, which has been accepted by common consent, or statute law, which prescribes the rule by which the court shall be governed. That permanent arbitration is the beginning, from which will come a permanent law and a permanent tribunal, is too plain to doubt; but, to this end, there must be experience, agreement and growth. We may now rejoice: "For unto us a child is born"; still we may also wait with patience for it to increase "in wisdom and stature and in favor with God and man." The parallel is not irreverent, for the message of "Peace on Earth" is the message and spirit of our Lord himself. Let us bear in mind that the child will become strong in power and judgment when childhood has passed away and manhood is attained.

Another reason against setting up a permanent court at present, is the fact that such a court may have little or nothing to do in the next six years; and even under a permanent treaty it may still be seldom called upon for judgment. Happy as the fact would be, if there should be few or no differences, yet it would be awkward to have a high court with nothing to do. A sinecure does not beget respect. The provisions of the treaty are both simple and ample to meet an emergency and are more comprehensive than we had reason to hope. For claims up to £100,000, each nation selects a jurist and the two choose an umpire. Claims over that sum go first to the court of three, with a right of review, if they are not unanimous in an award, before a court of five jurists, two to be chosen by each nation, with an umpire as before, where the award of a majority is to be final. Territorial claims go to a court of six judges, three from the courts of each country; a decision of five to one to be binding. In case the judgment of a smaller number shall not be accepted, there shall be no recourse to hostile measures, until the mediation of a friendly power shall have been invited.

The umpire, provided for the first two courts, is to be appointed by the King of Sweden in case of a failure to agree upon one as specified in the treaty.

All this is simple and practicable. These are ample safeguards for important questions. It is doubtful if a better scheme can be devised to start with. It covers almost all the questions which are likely to arise. At any rate it is all that could be expected for a beginning. Great credit is due to the negotiators for the Christian spirit, the broad statesmanship and the wise judgment which has produced it. In drafting this treaty Lord Salisbury and Mr. Olney have written their names on the roll of the immortals.

The administration of President Cleveland will be most memorable for this act.

It will be a great calamity, if by reason of petty partizanship or ambitious Jingoism, our senators shall fail to give it a cordial response. It is hard to think that such a thing is possible.

SHOULD BE RATIFIED, BUT FIRST THOROUGHLY EXAMINED BY THE SENATE.

BY CEPHAS BRAINERD, ESQ., OF THE NEW YORK BAR.

Whether the Senate of the United States ratifies, amends or rejects the Arbitration Treaty signed on the 11th of January 1897, the act of signing it by the authorized representatives of two great governments, will, at any rate, mark an epoch in the history of international relations and confer lasting fame upon two men, viz. Richard Olney and Sir Julian Pauncefote. This treaty, ratified or otherwise, will ever be one of the greatest papers in human annals. But great as it is, and important as are its objects, it ought not to be ratified by the Senate without a most careful consideration.

The Senate ought not to yield, in my judgment, in the slightest degree, to the pressure which is exerted to secure an immediate ratification. I have no part in the belief that there will be serious factious opposition to the treaty; on the contrary, I believe that Senators will bring to the consideration of this great document, the results of patient study and candid reflection. Whatever the vote may be, either for ratification or otherwise, it will be a conscientious vote, given too, in view of the prevailing sentiment here, and among all civilized people, that permanent arbitration should be substituted for resort to arms in every possible case. It may very well be however, that students of international relations in the Senate, familiar also with our own special interests, will suggest modifications either by way of limitation or extension, or in the detail of method, which will be eminently valuable and entirely acceptable.

The rejection of the treaty by the Senate would be vastly unfortunate; but a ratification of it with features so objectionable, (if they exist), as practically to nullify the instrument itself, or render proceedings under it unsatisfactory, would be far more disastrous to the cause of arbitration, than a rejection of the treaty. I say, therefore, let the treaty receive the fullest consideration, and let it be subjected to all reasonable and just criticism. "Advice and consent of the Senate" as used in the Constitution in respect of treaties, means something. Indeed the ratification of a treaty by the Senate without thought and inquiry, would be contrary to the spirit of our fundamental law, as is obvious from the very text of that instrument which requires a concurrence of two-thirds of the Senators present. This is made more apparent by No. 64 of the Federalist, written by Mr. Hamilton, where, in dealing with this particular subject, he uses the words, "information, integrity and *deliberate investigation*." So that, in regard to the present very grave situation, the

people of the United States and especially the friends of arbitration, should welcome a disposition on the part of senators to bestow upon this subject their best and most dispassionate thought.

The treaty is not without objectionable features. The important article is the sixth which provides for "a controversy which shall involve the determination of territorial claims," which are defined in the ninth article to include "questions involving servitude, rights of navigation and access, fisheries and all rights and interests necessary to the control and enjoyment of the territory claimed by either of the high contracting parties."

Unquestionably, the scope of this portion of the treaty is very broad and open to debate and construction. Most likely it would be held to embrace many of the claims which have been suggested as those undesirable to arbitrate. Very likely the claim alleged to exist in regard to a portion of Alaska is within the proper interpretation of this provision. Indeed, it has been suggested that the right of England to purchase Cuba of Spain might be contested against by the United States under it; that the vague notion of national right, termed the Monroe Doctrine, might be brought into debate; or the right of England to participate in the administration of the Nicarauga canal, if it should ever be built, under the provisions of the Clayton-Bulwer treaty. For myself, I say, let it be conceded that every one of these questions might come before the arbitral court. What of it? Why may they not be properly heard, properly decided and finally settled by such a court? What substantial danger is there that a commission composed of six members, three of whom are to be nominated by our own government and three by England, will ever render a decision five to one in respect of any or all of these questions to which both nations may not submit without loss of honor? Personally, I would like to have six competent men take up all that has been said and done in respect of the Monroe Doctrine and formulate, by a determination of five to one, if they cannot all agree, a statement of what the Monroe Doctrine really is, under international law or under our national usage and claim. Mind, I am not for a surrender of national right, national dignity or national duty, and if there is no way of indicating them other than by an appeal to arms, then I say take that appeal and abide the result. But whatever may be the views of individuals in regard to the import and value of the Monroe Doctrine,—and some there are who would accept as sound the preceding observations — one thing is perfectly certain, viz., that it is a darling idea with a great majority of the American people, and no agreement with any foreign nation which qualifies the national right and duty in that regard, will be acceptable or popular. It is well that the point has been made, and better to have it thoroughly understood before a vote is taken. The treaty would not be satisfactory to the American people if believed at all to compromise our government in regard to its action in the maintenance of the principle of that doctrine.

I do object most strenuously, as I have already stated in the ADVOCATE, to the appointing of judges of our courts upon an arbitral tribunal. I think every sound reason is against it, while I believe that the judges of the Supreme Court, and of the appellate courts are, as a body of men, in every respect as well qualified for the performance of the duties assigned to them in the scheme of our government as any judicary in the world, I can see no sound reason for excluding from this tribunal in its highest functions, under Article VI., men of the type of George F. Edmunds, William Allen Butler, Henry Hitchcock, Edward J. Phelps and President Angell. On the contrary I believe that this class of men is the very class from which the arbitrators under Article VI. ought to be selected. But feeling strongly as I do the soundness of this position, I would not make it now an objection to the ratification of the present treaty, for the reason that the treaty is to subsist but for five years; the whole scheme is experimental and open to amendment by agreement between the high contracting parties.

Of course, there is nothing to be said about the provisions of the treaty for the determination of mere pecuniary claims less than $500,000 and others in excess of that amount; and the suggestion of the remote contingency that the selected arbitrators may not agree upon an umpire or the Justices of the Supreme Court of the United States and the members of the Judicial Committee of the Privy Council may not agree, and then that the King of Sweden might appoint an arbitrator who had prejudged the case against the United States, is practically without foundation. The idea that any ruler of a respectable nation would when called upon to exercise this function, engage in the business of shopping around to see if he could find an umpire who stood practically pledged to decide in favor of one party or the other is not to be tolerated.

One thing is certain, our country and Great Britain are ready for such a treaty, the pending document has received the most careful study, it means progress, and will, I cannot doubt, receive such action in the Senate as will give a solid assurance that Kant's "Dream of Perpetual Peace" is soon to be, not a dream, but a fact.

A VERY GREAT AND AUSPICIOUS STEP.

BY EX-SENATOR GEORGE F. EDMUNDS.

From a letter written at the request of some Philadelphia gentlemen:

"The three principal criticisms of the treaty are, first, that it commits this government to submitting to arbitration questions that may arise in connection with the Monroe doctrine.

With sincere respect for the gentlemen who, it is said, have suggested this objection, I think that it is quite unfounded, and that those who have advanced it must have failed to observe the careful language used in the treaty.

The words upon which the criticism is based are found in ART. IV., as follows:

> All other matters in difference, in respect of which either of the high contracting parties shall have rights against the other under the treaty or otherwise.

What, then, are "rights against the other"? In the theory of the municipal state and of all its autonomy, the rights of one citizen against another are essentially and exclusively those things that the law of the state enjoins upon each in regard to the other. This is the whole definition. Precisely the same is true in international law. This, I believe, all writers on national law and international law agree in.

To illustrate these propositions, I take it that the United States has no rights against Great Britain in re-